

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE  
GENERAL PROVISIONS  
FOR  
GOODS AND SERVICES**

Attached are the State Procurement Office's General Provisions, dated January 1, 2007, which will be made a part of all offers for goods and services contracts.

Offerors are cautioned to read and understand all the terms and conditions contained in the General Provisions.

**STATE PROCUREMENT OFFICE  
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FOR  
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**1. DEFINITIONS OF TERMS**

Terms as used in these General Provisions, unless the context requires otherwise, shall have the following meaning:

a. BID

Bid means any offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.

b. BID OR PROPOSAL FORM

The prescribed form or format, which an offeror uses to submit his offer.

c. BID OR PROPOSAL GUARANTY OR SECURITY

The security when required, furnished by an offeror with his offer to ensure that the offeror will enter into the contract with the STATE and execute the required contract and payment bonds covering the work contemplated, if his offer is accepted.

d. CHANGE ORDER

Change order means a written order signed by the procurement officer, directing the CONTRACTOR to make changes, which the changes clause of the contract authorizes the procurement officer to order without the consent of the CONTRACTOR.

e. CONTRACT

Contract means the combination of the solicitation, including the instructions to offerors, the specifications or scope of work, the special provisions, and the general terms and conditions; the offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.

f. CONTRACT BOND

The approved form of security furnished by the CONTRACTOR and his surety or sureties or by the CONTRACTOR alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.

g. CONTRACT MODIFICATION

Contract modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

h. CONTRACTOR

An individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of work under the terms of the contract with the STATE. and acting directly or through his, their or its agents, employees or sub-contractors.

i. DAY

Days mean calendar days unless otherwise specified.

j. GET

General Excise Tax

- k. HAR  
Hawaii Administrative Rules
- l. HEAD OF THE PURCHASING AGENCY  
The head of any agency with delegated procurement authority by law or from a chief procurement officer of this STATE to enter into and, administer contracts.
- m. HRS  
Hawaii Revised Statutes
- n. IFB  
Invitation for Bids
- o. OFFER  
An offer means a bid or proposal as defined in sections 1a and 1s, in response to any solicitation.
- p. OFFEROR  
Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1t.
- q. PROCUREMENT OFFICER  
Procurement officer means the person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.
- r. PRIORITY-LISTED OFFERORS  
Priority-listed offerors are the three or more responsive and responsible offerors who have submitted the highest rank proposals.
- s. PROPOSAL  
A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1a.
- t. PURCHASING AGENCY  
Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.
- u. RFP  
Request for Proposals
- v. SOLICITATION  
Solicitation means an invitation for bids ("IFB"), used in the competitive sealed bidding process or a request for proposals ("RFP"), used in the competitive sealed proposal process for the purpose of obtaining bids or proposals to perform a STATE contract.

w. SPO

State Procurement Office of the State of Hawaii, located at 1151 Punchbowl Street, Room 416, Honolulu, Hawaii 96813; P.O. Box 119, Honolulu, Hawaii 96810-0119.

x. SPECIAL PROVISIONS

The terms and conditions pertaining to the specific solicitation in which they are contained and in addition to these General Provisions; including but not limited to terms and conditions describing the preparation of solicitations, evaluation of offers, determination of award, plus those applicable to performance by the CONTRACTOR.

Additions or revisions to the General Provisions, which shall be considered a part of the General Provisions, setting forth conditions or requirements applicable to the particular project or contract under consideration shall be included in the Special Provisions. Should any Special Provisions conflict with these General Provisions, said Special Provisions shall govern.

y. SPECIFICATIONS

A description of what the purchasing agency requires and, consequently, what an offeror must offer to be considered for award.

z. STATE

STATE means the remaining departments of the executive branch and all governmental bodies administratively attached to it, excluding the judiciary, the legislature, the department of education, University of Hawaii, the division of community hospitals, and the office of Hawaiian affairs, except where specifically included in any particular solicitation.

aa. SURETY

The individual, firm, partnership or corporation other than the CONTRACTOR, which executes a bond with and for the CONTRACTOR to ensure the CONTRACTOR's acceptable performance of the contract.

bb. WORK

The furnishing by the CONTRACTOR of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

**2. COMPETENCY OF OFFEROR**

Prospective offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the offeror to furnish satisfactorily the goods or services being solicited by the STATE. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any offeror who refuses to answer such inquiries will be considered non-responsive.

The purchasing agency reserves the right to visit an offeror's place of business to inspect his facilities and equipment and to observe his methods of operation in order to facilitate evaluation of performance capabilities.

**3. SOLICITATION FORMS**

Prospective offerors will be furnished with solicitation forms which may include but not be limited to a statement of work, the location, description and the contract time of the contemplated work, the various quantities being requested, estimated and/or firm, and items of work to be performed or materials to be furnished, along with a schedule of items for which unit prices and/or lump sum prices are asked, depending on the type of solicitation, e.g. invitation for bids or request for proposals.

The AG's General Conditions, Specifications, General and Special Provisions and other documents referenced in or attached to the solicitation shall be considered a part of the offer whether attached to the solicitation or not at the time of its submission. Such documents shall not be altered in any way when the proposal is submitted and any alterations so made by the offeror may be cause for rejection of the offer.

**4. EXAMINATION OF GENERAL CONDITIONS, SPECIFICATIONS, GENERAL AND SPECIAL PROVISIONS, SITE OF WORK, ETC.**

The offeror shall carefully examine the site of the contemplated work, the solicitation, General Conditions, Specifications, General and Special Provisions, amendments, required contract and bond forms, etc. before submitting offers. The submission of an offer shall be considered as a warranty that the offeror has made such careful examination and is satisfied with the conditions to be encountered in performing the work and with the requirements of the solicitation, General Conditions, Specifications, General and Special Provisions, amendments, required contract and bond forms.

No extra compensation will be given by reason of the CONTRACTOR'S misunderstanding or lack of knowledge of the requirements of the work to be accomplished or the conditions to be encountered in performing the work.

**5. ADDENDA AND INTERPRETATIONS**

Discrepancies, omissions or doubts as to the meaning of General Conditions, Specifications or General and Special Provisions should be communicated in writing to the procurement officer and must be received by the purchasing agency no later than two (2) working days prior to the date fixed for opening. Any interpretation, if made, and any supplemental instructions will be in the form of written addenda to the solicitation, which will be mailed, faxed, or made available for pick up by all prospective offerors, prior to the date fixed for the opening of offers. It shall be presumed that any addenda or interpretations so issued have been received by an offeror and such addenda or interpretations shall become a part of the contract documents.

**6. PREPARATION OF OFFER**

Proposals submitted in response to request for proposals (RFP) shall be in the format prescribed by the RFP.

The bids submitted in response to an invitation for bids (IFB) must be prepared in ink or typed on the form furnished by the purchasing agency or on an exact copy thereof in full accordance with the instructions given. For each item, the offeror shall specify the unit and total price in figures in the columns provided for that purpose and, if required, the total sum of all items being offered.

Where the IFB involves the furnishing and delivery of goods, the price shall include the cost of delivery to the specified destination, at which point acceptance of said goods will



be made by authorized personnel. Should special requirements involving additional costs to the vendor be necessary, the requirements will be stated in the Special Provisions and offers for the costs shall therefore be governed by the Special Provisions.

An offeror may submit only one offer in response to a solicitation. If an offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an offeror may submit only one offer for each line item (if any) of a solicitation. If an offeror submits more than one offer per line item, then all offers for that line item shall be rejected.

Competing subsidiary or jointly-owned companies may submit bids or proposals and these may be accepted for evaluation and award if such companies submit with their bids or proposals a certificate of non-collusion, sworn to before a notary, which acknowledges that the offer is without collusion.

Unless otherwise specified in the solicitation, all prices shall include applicable Federal, state and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer.

Offers submitted in response to an IFB or RFP shall be signed in ink in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on the offeror's behalf.

## **7. OFFER GUARANTY**

Unless required by the special provisions, a bid or proposal security deposit, performance and payment bonds, or any other guaranty is not required on any offer for goods or services.

When required by the special provisions, an acceptable bid or proposal security deposit shall be in an amount equal to at least five percent of the amount offered and shall be limited to: a bond in a form satisfactory to the STATE underwritten by a company licensed to issue bonds in this STATE; legal tender; or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, official check, or certified check may be utilized only to a maximum of \$100,000, provided however, if the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions, may be submitted.

If an offer does not comply with the security requirements, the offer shall be rejected as non-responsive, unless the failure to comply is determined by the chief procurement officer, the head of a purchasing agency, or the designee of such officer to be non-substantial pursuant to section 3-122-223, Hawaii Administrative Rules (HAR).

**8. CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES**

All offerors for service contracts shall comply with section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of CONTRACTOR supplying services: Before any prospective offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$5,000 to any governmental agency, offeror shall certify that the services to be performed will be performed under the following conditions:

Wages: The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws: All applicable laws of the Federal and state governments relating to workers compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

No contract to perform services for any governmental contracting agency in excess of \$5,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$5,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$5,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (16) of section 76-16, Hawaii Revised Statutes, (HRS).
- (5) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (6) Contracts with nonprofit institutions.

**9. PRE-OPENING MODIFICATION OR WITHDRAWAL OF OFFERS**

Offers may be modified or withdrawn prior to the deadline for submittal of offers by the following documents:

Modification of offers: a written notice received in the office designated in the solicitation, stating that a modification to the offer is submitted; or a facsimile or electronic notice

accompanying the actual modification submitted either by facsimile machine, electronic mail, or an electronic procurement system.

Withdrawal of offers: a written notice received in the office designated in the solicitation; or a notice by facsimile machine or other electronic method pursuant to section 3-122-9, HAR, to the office designated in the solicitation.

**10. RECEIPT, OPENING, AND RECORDING OF BIDS**

Upon its receipt, each bid and modification(s) shall be time-stamped but not opened, and stored in a secure place by the procurement officer until the time and date set for bid opening. Purchasing agencies may use other methods of receipt when approved by the procurement officer.

Bids and modification(s) shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the IFB. The name of each bidder, the bid price(s), and such other information as is deemed appropriate by the procurement officer or his designated representative, shall be read aloud or otherwise made available. If practicable, such information shall also be recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The name(s) and address(es) of the required witnesses shall also be recorded at the opening.

The opened bids shall be available for public inspection at the time of bid opening except to the extent that the bidder designates trade secrets or other proprietary data to be confidential. Bidders shall ensure that material so designated as confidential shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices and makes and model or catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

The procurement officer, or his designated representative, shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the procurement officer or his designated representative shall inform the bidders present at the bid opening that the material designated for nondisclosure shall be subject to written determination by the attorney general for confidentiality. If the attorney general determines in writing that the material so designated as confidential is subject to disclosure, the bidder submitting the material under review and other bidders who were present at the bid opening shall be so notified in writing and the material shall be open to public inspection unless the bidder protests under chapter 3-126, HAR.

The bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

When a purchasing agency denies a person access to a STATE procurement record, the person may appeal the denial to the office of information practices in accordance with section 92F-42(12), HRS.

Bids shall be unconditionally accepted without alteration or correction, except as allowed in Sections 9 and 12.

**11. RECEIPT AND REGISTRATION OF PROPOSALS**

Proposals and modifications shall be time-stamped upon receipt and held in a secure place by the procurement officer until the established due date. Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be shown only to STATE personnel having legitimate interest in them.

After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the good or service item offered. The register of proposals shall be open to public inspection only after award of the contract.

An offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Offerors shall ensure that such data so designated as confidential shall be readily separable from the proposals in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Proposals of the offeror(s) shall be open to public inspection upon posting of award pursuant to section 103D-701, HRS.

**12. LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS**

Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offer received at the place designated for receipt and opening of an offer after the time and date set for receipt and opening of offers is late. A late offer, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity. A late offer or late modification that will not be considered for award shall be returned to the bidder unopened as soon as practicable and accompanied by a letter from the procurement activity stating the reason for its return. A late withdrawal request shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

**13. MISTAKES IN BIDS**

- a. A bidder may correct a mistake in bid discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 9.
- b. Correction or withdrawal of a bid after the time and date set for bid opening because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the governmental agency or the fair treatment of other bidders.
- c. When, after bid opening but before award, the procurement officer knows or has reason to conclude that a mistake has been made, including obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids is submitted, such officer should request the bidder to confirm the bid. If the bidder alleges mistake, the bid may be corrected or withdrawn by the bidder if the conditions under subsections "d" and "e" of this section are met and if the mistake is

a minor informality which is a matter of form rather than substance evident from the bid document, or an insignificant mistake that can be waived by the procurement officer or corrected by the bidder without prejudice to other bidders depending on which is in the best interest of the governmental jurisdiction soliciting the bid; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Examples include the failure of a bidder to: return the number of signed bids required by the IFB; to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or to acknowledge receipt of an amendment to the IFB (if such acknowledgement is required by the IFB) but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or the amendment involved had a negligible effect on price, quantity, quality, or delivery.

- d. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of such mistakes include: typographical errors; errors in extending unit prices; transposition errors; and arithmetical errors. In the event of a discrepancy between unit bid prices and extensions, the unit price shall govern. In case of error in addition, the sum of the total amount offered for each item added shall govern.
- e. A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
- f. A bidder may not correct a mistake in bid discovered after award of the contract except where the chief procurement officer or the head of the purchasing agency makes a written determination that it would be unreasonable not to allow the mistake to be corrected.
- g. When a bid is corrected or withdrawn, or correction or withdrawal is denied, under "c" or "d," the chief procurement officer or the head of a purchasing agency shall prepare a written determination showing that the relief was granted or denied in accordance with HAR, subchapter 5, section 3-122-31, except that the procurement officer shall prepare the determination required under paragraph (1) of subsection (C).

#### **14. MISTAKES IN PROPOSALS**

- a. Mistakes shall not be corrected after award of contract.
- b. When the procurement officer knows or has reason to conclude before award that a mistake has been made, the procurement officer should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.
- c. Once discussions are commenced or after best and final offers are requested, any priority-listed offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
- d. If discussions are not held, or if the best and final offers upon which award will be

made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

- e. If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the procurement officer may waive such irregularities or allow an offeror to correct them if either is in the best interest of the STATE. Examples include the failure of an offeror to: return the number of signed proposals required by the request for proposals; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

**15. OFFER INSPECTION**

Offers to competitive sealed bids (IFB) may be inspected only as provided for in Section 10, and after award of contract. During the evaluation and award recommendation period, offers will not be available for inspection. For the competitive sealed proposals (RFP), except for confidential portions, the proposals shall be made available for public inspection upon posting of award pursuant to Section 103D-701, HRS.

**16. DISQUALIFICATION OF OFFERORS**

An offeror shall be disqualified and his offer automatically rejected for any one of the following reasons: proof of collusion, in which case, all offers involved in the collusive action will be rejected and any participant to such collusion will be barred from future solicitations until reinstated; or offeror's delivery of the offer after the deadline specified in the public notice calling for offers, or as amended, except as allowed in Section 3-122-29 (1), HAR.

An offeror may be disqualified and his offer rejected for any one or more of the following reasons: offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with the STATE or having defaulted on previous contracts; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror does not possess proper license to cover the type of work contemplated, if required; or offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former STATE contracts at the time of issuance of solicitation.

**17. IRREGULAR OFFERS**

Offers will be considered irregular and shall be rejected for the following reasons including but not limited to the following: if the offer is unsigned by the offeror, unless otherwise specified in the Special Provisions; if the required offer guaranty received separately from the offer is not identifiable as guaranty for a specific offer, or is received after the date and time set for the opening; if the required offer guaranty is not in accordance with Section 9 of these General Provisions; if the offeror or surety fails to sign the surety bond submitted as offer guaranty; if offeror fails to use the surety bond form furnished by the STATE or identical wording contained in the said form when submitting a surety bond as proposal guaranty; if the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

**18. CANCELLATION OF SOLICITATIONS AND REJECTION OF OFFERS**

The solicitation may be cancelled or the offers may be rejected, in whole or in part, when in the best interest of the purchasing agency, as provided in Sections 3-122-95 through 3-122-97, HAR.

**19. STANDARDS OF CONDUCT**

Section 84-15, HRS, provides as follows:

- a. A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:
  - (1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
  - (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
  - (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.
- b. A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.
- c. All offerors should be certain that their bids are not in violation of this law. The submittal form states that by submitting this offer, offeror certifies that his offer does not pose a conflict with section 84-15, HRS. Contracts awarded shall be void if there is a violation of section 84-15, HRS.

**20. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

Unless otherwise specified in the solicitation, a legislative body has appropriated the funds for this contract.

Therefore, if awarded a contract in response to this solicitation, offeror agrees to comply with Section 11-205.5, HRS, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

**21. CONFIDENTIALITY OF MATERIAL**

Pursuant to AG-008 Rev. 11/15/2005, Section 24(b), Confidentiality of Material, the offeror shall designate in writing to the Procurement Officer those portions of its un-priced offer or any subsequent submittal that are trade secrets or other proprietary data that the offeror desires to remain confidential, subject to §3-122-58, HAR, in the case of an RFP, or §3-122-30, HAR, in the case of an IFB. The offeror shall state in its written communication to the Procurement Officer, the reason(s) for designating the material as confidential, for example, trade secrets. The offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer.

Price is not confidential and will not be withheld. In addition, in the case of an IFB, makes and models, catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Office of the Attorney General in accordance with chapter 92F, HRS. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the offeror protests under chapter 3-126, HAR. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with §92F-15.5, HRS.

**22. PREFERENCES FOR EVALUATION PURPOSES**

**a. HAWAII EXCISE AND USE TAXES**

Section 103-53.5, HRS, provides as follows:

Where the bidder or vendor is an out-of-state vendor not doing business in the STATE or is a person exempted from paying the applicable general excise tax, the package bid or purchase price, for the purpose of determining the lowest price bid, shall be increased by the applicable retail rate of general excise tax and the applicable use tax. The lowest responsible bidder, taking into consideration the above increases, shall be awarded the contract, but the contract amount of any contract awarded shall be the amount of the bid offered and shall not include the amount of the increases.

To facilitate compliance with this requirement, each bidder possessing a Hawaii I.D. number for General Excise Tax License shall enter it in the space provided, thereby



attesting that he is doing business in the STATE and that he will pay such taxes on all sales made to the STATE. Except as provided in the Special Provisions, any bidder who cannot furnish a valid Hawaii General Excise Tax License number in the space provided will be considered as not doing business in the STATE and his bid will be evaluated accordingly.

b. PREFERENCE FOR HAWAII PRODUCTS

Subchapter 1, Chapter 3-124, HAR provides as follows:

A purchasing agency shall review all specifications in a bid or proposal for purchase from the Hawaii products (HP) list where these products are available; provided that the products: Meet the minimum specifications and the selling price f.o.b. jobsite; unloaded, including applicable general excise tax and use tax, does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; and unloaded, including applicable general excise tax and use tax, does not exceed the lowest delivered price of a similar non-HP by more than: three per cent where class I HP are involved; five per cent where class II HP are involved; or ten per cent where class III HP are involved.

All persons submitting bids or proposals to claim HP preference shall designate in their bids which individual product and its price is to be supplied as a HP.

Where a bid or proposal contains both Hawaii and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a HP item shall be decreased by subtracting therefrom: three per cent, five per cent, or ten per cent for the class I, class II, or class III HP items bid or offered, respectively. The lowest total bid or proposal, taking the preference into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.

Any person desiring a preference pursuant to this subchapter, must have the product(s) qualified and registered on the Hawaii products list. The responsibility for qualification shall rest upon the person desiring the preference. The product(s) shall be found qualified and on the Hawaii products list before a preference may be granted. Persons desiring to qualify their product(s) shall complete according to instructions and file with the administrator, the 'Application for Hawaii Products Preference', which is available from the State Procurement Office, and provide all additional information required by the administrator.

c. PRINTING PREFERENCE

Subchapter 2, Chapter 3-124, HAR, provides that:

All bids or proposals submitted for a printing, binding, or stationery contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other production-related work shall receive a fifteen per cent preference for purposes of bid or proposal evaluation.

Where bids or proposals are for work performed in-state and out-of-state, then for the purpose of selecting the lowest bid or evaluating proposals submitted only, the

amount bid or proposed for work performed out-of-state shall be increased by fifteen per cent. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.

d. RECIPROCAL PREFERENCE

Subchapter 3, Chapter 3-124, HAR, provides that:

To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief procurement officer may impose a reciprocal preference against bidders from those states, which apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by this STATE.

In determining whether a bidder qualifies as a resident offeror, the definition used by the other state in applying a preference shall apply.

This, section shall not apply to any transaction if the provisions of the section conflict with any Federal laws.

e. RECYCLED PRODUCTS PREFERENCE

Subchapter 4, chapter 3-124, HAR, provides that:

Solicitations issued by a governmental agency pursuant to Section 103D-301, HRS, and consistent with Section 3-124-22, HAR, shall contain a notice stating that a price preference will be given to recycled products. This price preference will be at least five per cent of the bid price, and will be used for bid evaluation, as specified in Section 3-124-25, HAR.

When a purchase specifies recycled products only or when recycled products only are offered; the price preference shall not apply.

Offerors requesting a preference shall submit a completed certification form, as required by Section 3-124-23, HAR, with each offer. Previous certifications shall not apply unless allowed by the solicitation.

All governmental agencies issuing solicitations shall provide an appropriate space for offeror to indicate whether a recycled or a non-recycled product is to be used or supplied and to list the prices of the recycled or non-recycled products or both being offered.

The preference shall be separate from any other preference allowed by statute.

f. SOFTWARE DEVELOPMENT BUSINESSES PREFERENCE

Subchapter 5, Chapter 3-124, HAR, provides that:

The preference shall apply to all bids or offers issued by a purchasing agency when

so stated in the solicitation.

Bids issued by a governmental agency pursuant to Section 103D-301, HRS, shall contain a notice stating that a price preference will be given to Hawaii software development businesses. This price preference will be ten per cent of the bid price, and will be used for bid evaluation.

Bidders requesting a preference shall submit a completed certification form, as required by Section 3-124-33, with each bid. Previous certifications shall not apply unless allowed by the bid.

Any bidder who fails to indicate that it is a Hawaii software development business will be presumed to be a non-Hawaii software development business and the bidder's proposal will be increased by ten per cent for purposes of evaluation.

Where a bid or purchase contains both Hawaii software development businesses and non-Hawaii software development businesses, then for the purpose of determining the lowest evaluated bid, the original bid price for the non-Hawaii software development businesses shall be increased by ten per cent.

The responsible bidder submitting the lowest evaluated bid(s), taking into consideration all applicable preferences shall be awarded the contract, provided the product being offered meets the minimum bid specifications.

The contract amount of any contract awarded shall be the original bid price offered, exclusive of any preferences.

## **23. LOW TIE BIDS**

Subchapter 5, chapter 3-122, HAR, provides that:

Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation for bids.

At the discretion of the procurement officer, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:

- Award the contract to a business providing goods produced or manufactured in this STATE or to a business that otherwise maintains a place of business in this STATE;
- Where identical low bids include the cost of delivery, award the contract to the tie bidder farthest from the point of delivery; or
- Award the contract to the identical bidder, who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical.

If not otherwise specified in the Special Provisions, or no permissible method will be effective in resolving tie bids and a written determination by the procurement officer is made so stating, award may be made by drawing lots.

**24. ACCEPTANCE OF OFFER**

- a. Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products or servicing capabilities must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The STATE shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.
- b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.
- c. The head of a purchasing agency further reserves the right to cancel the contract award at anytime prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

**25. RESPONSIBILITY OF AWARDED OFFEROR**

Pursuant to Section 103D-310(c), HRS, the responsive offeror recommended for contract award, if any, shall submit compliance documents to the SPO prior to award. Offeror is directed to the following section for information on obtaining the required compliance documents.

**26. COMPLIANCE DOCUMENTS PURSUANT TO SECTION 103D-310(c), HRS**

- a. **Hawaii Compliance Express.** Offeror may collectively apply for the certificates through the Hawaii Compliance Express (HCE). The HCE allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance," indicating that vendor's status is compliant with the requirements of Section 103D-310(c), HRS, shall be accepted for both contracting purposes and final payment, if required. Vendors that elect to use the new HCE services will be required to pay an annual fee to the Hawaii Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the sub-sections **b**, **c**, and **d**, that follow.

- b. **HRS Chapter 237 tax clearance requirement for award.** Instructions are as follows:

Pursuant to Section 103D-328, HRS, lowest responsive offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the SPO.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): [http://www.hawaii.gov/tax/a1\\_1alphalist.htm](http://www.hawaii.gov/tax/a1_1alphalist.htm)

DOTAX Forms by Fax/Mail: (808) 587-7572  
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488  
IRS: (808) 539-1573

The application for the clearance is the responsibility of the offeror, and must be submitted directly to the DOTAX or IRS and not to the SPO. However, the tax clearance certificate shall be submitted to the SPO.

- c. **HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.** Instructions are as follows:

Pursuant to Section 103D-310(c), HRS, the lowest responsive offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the SPO. A photocopy of the certificate is acceptable to the SPO.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 which is available at <http://hawaii.gov/labor/formsall.shtml> or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the SPO.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the SPO. However, the certificate shall be submitted to the SPO.

- d. **Compliance with Section 103D-310(c), HRS, for an entity doing business in the State.** The lowest responsive offeror shall be required to submit a *CERTIFICATE OF GOOD STANDING* (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the SPO. A photocopy of the certificate is acceptable to the SPO.

To obtain the Certificate, the offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.

On-line business registration and the COGS are available at [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com). To register or to obtain the COGS by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the COGS.

- e. **Timely Submission of all Certificates.** The above certificates should be applied for and submitted to the SPO as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offeror otherwise responsive and responsible may not receive the award.

**27. PROTEST**

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award letter(s), if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Procurement Officer, SPO, 1151 Punchbowl Street, Room 416, Honolulu, Hawaii 96813 or P. O. Box 119, Honolulu, Hawaii 96810-0119.

**28. VARIATIONS IN QUANTITIES FOR INDEFINITE QUANTITY CONTRACTS**

No clause is provided here because in indefinite quantity contracts the flexibility as to the STATE'S obligation to order and the CONTRACTOR'S obligation to deliver should be designed to meet using agency needs.

However, the contract's special provisions should provide for: the minimum quantity, if any, the STATE is obligated to order and the CONTRACTOR to provide; whether there is a quantity the STATE expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract; any maximum quantity the STATE may order and the CONTRACTOR must provide; and whether the STATE is obligated to order its actual requirements under the contract, or in the case of a multiple

award that the STATE will order its actual requirements from the CONTRACTORS under the multiple award subject to any minimum or maximum quantity stated.

**29. EXECUTION OF CONTRACT**

Any agreement arising out of this solicitation may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

The following subsections shall not apply to any contract in which the total amount payable to the CONTRACTOR cannot be accurately estimated at the time the contract is to be awarded:

- a. In cases where the contract award equals or exceeds the dollar level specified in Section 103D-305, HRS, the STATE shall forward a formal contract to the successful offeror for execution. The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten days after receipt by the vendor or within such further time as the procurement officer may allow.
- b. No such contract shall be considered binding upon the STATE until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.
- c. Pursuant to the Attorney General's General Conditions (AG-008 Rev. 11/15/2005), Section 18, in any contract involving not only STATE but supplemental funds from the Federal government, this section shall be applicable only to that portion of the contract price as is payable out of STATE. As to the portion of the contract price as is expressed in the contract to be payable out of Federal funds, the contract shall be construed to be an agreement to pay the portion to the CONTRACTOR, only out of Federal funds to be received from the Federal government. This subsection shall be liberally construed so as not to hinder or impede the STATE in contracting for any project involving financial aid from the Federal government.

**30. CONTRACT BOND**

- a. The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.
- b. When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the CONTRACTOR to the STATE at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed fifty per cent of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation. ‘

- c. The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in Section 7. If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

**31. FAILURE TO EXECUTE CONTRACT**

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract, and to furnish satisfactory security as required by Section 30 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required under Section 7, into the State Treasury as a realization of the STATE. The procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method he may deem is in the best interest of the STATE.

**32. RETURN OF OFFER GUARANTIES**

All offer guaranties submitted as required by subchapter 24, chapter 3-122, HAR, shall be retained until the successful offeror enters into contract and furnishes satisfactory security or if the contract is not awarded or entered into, until the procurement officer's determination is made to cancel the solicitation. At such time, all offer guaranties, except surety bonds, will be returned.

**33. PAYMENT**

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

**34. DELIVERY EXTENSIONS**

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the STATE in its solicitation requirements, and all goods must be delivered with the time specified. However, the CONTRACTOR will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, act of God or other reason beyond his control, provided that he notifies the STATE of such delay and the reason therefore as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time shall be accompanied by documents such as the CONTRACTOR's purchase order, manufacturer's acknowledgement, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the CONTRACTOR. The STATE shall be the sole judge of whether such delay is truly beyond the control of the CONTRACTOR and whether extension will be granted. The STATE reserves the right to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by specific authorized extension.



**35. PERSONAL LIABILITY OF PUBLIC OFFICIALS**

In carrying out any of the provisions of the contract or in exercising any power or authority granted to them by the contract, there shall be no liability upon the procurement officer or his authorized representatives, either personally or as officials of the STATE, it being understood that in such matters, they act solely as agents and representatives of the STATE.

**36. CORRECTIONAL INDUSTRIES**

Goods and services available through Correctional Industries (CI) programs may be the same or similar to those awarded by competitive sealed bids or proposals. Agencies participating in SPO requirements (price list) contracts may also procure directly from CI and shall not be considered in violation of the terms and conditions of any SPO contract.